



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/157144

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on June 10, 2014.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Stephanie Edel, Case Manager
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On November 18, 2013, the county agency sent a written notice of negative action to the petitioner.
3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on April 23, 2014.

4. The negative action in this case was termination of Family Care benefit effective December 1, 2013.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. §49.45(5); Income Maintenance Manual §3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 156 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I add for petitioner's information that even if this appeal was timely filed, there is no issue for determination because the petitioner's Family Care benefit was not terminated effective December 1, 2013. The agency provided evidence that petitioner received his MA (Family Care) in December 2013 with no lapse or reduction in benefits. As such, there would be no issue for determination. I add that petitioner's concern with respect to his Family Care benefit has to do with the six month report form (SMRF) reporting and the confusion he has with that process. This is not an issue over which I have jurisdiction. He is reminded that he may request an authorized representative to assist him with the process. I also add that the Family Care Case Manager has offered to help petitioner with the process as well, but that at this point he has refused her help. I add, finally, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of June, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 11, 2014.

Racine County Department of Human Services
Office of Family Care Expansion